

AMENDED IN ASSEMBLY APRIL 1, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 409**

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**Introduced by Assembly Member Garrick**

February 23, 2009

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An act to amend Section 1063.5 of the Insurance Code, relating to the California Insurance Guarantee Association.

LEGISLATIVE COUNSEL'S DIGEST

AB 409, as amended, Garrick. California Insurance Guarantee Association: insurer insolvency.

Existing law requires the California Insurance Guarantee Association to collect premium payments from member insurers sufficient to cover the obligations of an insurer that has become insolvent. Under existing law, ~~the association must use those premium payments to pay for the claims and costs of an insolvent insurer, as specified.~~ *the rate of premium charged a member insurer is a uniform percentage of the net direct written premium of the insurer in the preceding calendar year. Existing law provides that the initial premium charge shall be adjusted by applying the same rate of premium charge as initially used to each insurer's written premium as shown on the annual statement for the 2nd year following the year in which the initial premium charge is made.*

~~This bill would state that the payments and costs of an insolvent insurer which have been incurred but not reported are included within the claim payments and costs to be paid for by the association, as specified.~~

*This bill would, instead, provide that the initial premium charge shall be adjusted by applying the same rate of premium charge as initially*

*used to each insurer's written premium as shown on the annual statement for the 2nd year following the year on which the initial premium charge was based.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1063.5 of the Insurance Code is amended  
2 to read:  
3     1063.5. Each time an insurer becomes insolvent then, to the  
4 extent necessary to secure funds for the association for payment  
5 of covered claims of that insolvent insurer and also for payment  
6 of reasonable costs of adjusting the claims, the association shall  
7 collect premium payments from its member insurers sufficient to  
8 discharge its obligations. The association shall allocate its claim  
9 payments and costs, incurred or estimated to be incurred, ~~including~~  
10 ~~incurred but not reported payments and costs,~~ to one or more of  
11 the following categories: (a) workers' compensation claims; (b)  
12 homeowners' claims, and automobile claims, which shall include:  
13 automobile material damage, automobile liability (both personal  
14 injury and death and property damage), medical payments and  
15 uninsured motorist claims; and (c) claims other than workers'  
16 compensation, homeowners', and automobile, as above defined.  
17 Separate premium payments shall be required for each category.  
18 The premium payments for each category shall be used to pay the  
19 claims and costs allocated to that category. The rate of premium  
20 charged shall be a uniform percentage of net direct written premium  
21 in the preceding calendar year applicable to that category. The rate  
22 of premium charges to each member in the appropriate categories  
23 shall initially be based on the written premium of each insurer as  
24 shown in the latest year's annual financial statement on file with  
25 the commissioner. The initial premium shall be adjusted by  
26 applying the same rate of premium charge as initially used to each  
27 insurer's written premium as shown on the annual statement for  
28 the second year following the year ~~in~~ on which the initial premium  
29 charge ~~is made~~ was based. The difference between the initial  
30 premium charge and the adjusted premium charge shall be charged  
31 or credited to each member insurer by the association as soon as  
32 practical after the filing of the annual statements of the member

1 insurers with the commissioner for the year on which the adjusted  
2 premium is based. Any credit due in a specific category to a  
3 member insurer as a result of the adjusted premium calculation  
4 may be refunded to the member insurer at the discretion of the  
5 association if the member insurer has agreed with the commissioner  
6 to no longer write insurance in that category but has not withdrawn  
7 from the state and surrendered its certificate of authority. However,  
8 in the case of an insurer that was a member insurer when the initial  
9 premium charge was made and that paid the initial assessment but  
10 is no longer a member insurer at the time of the adjusted premium  
11 charge by reason of its insolvency or its withdrawal from the state  
12 and surrender of its certificate of authority to transact insurance  
13 in this state, any credit accruing to that insurer shall be refunded  
14 to it by the association. "Net direct written premiums" shall mean  
15 the amount of gross premiums, less return premiums, received in  
16 that calendar year upon business done in this state, other than  
17 premiums received for reinsurance. In cases of a dispute as to the  
18 amount of the net direct written premium between the association  
19 and one of its members the written decision of the commissioner  
20 shall be final. The premium charged to any member insurer for  
21 any of the three categories or a category established by the  
22 association shall not be more than 2 percent of the net direct  
23 premium written in that category in this state by that member per  
24 year, starting on January 1, 2003, until December 31, 2007, and  
25 thereafter shall be 1 percent per year. The association may exempt  
26 or defer, in whole or in part, the premium charge of any member  
27 insurer, if the premium charge would cause the member insurer's  
28 financial statement to reflect an amount of capital or surplus less  
29 than the minimum amounts required for a certificate of authority  
30 by any jurisdiction in which the member insurer is authorized to  
31 transact insurance. However, during the period of deferment, no  
32 dividends shall be paid to shareholders or policyholders by the  
33 company whose premium charge was deferred. Deferred premium  
34 charges shall be paid when the payment will not reduce capital or  
35 surplus below required minimums. These payments shall be  
36 credited against future premium charges to those companies  
37 receiving larger premium charges by virtue of the deferment. After  
38 all covered claims of the insolvent insurer and expenses of  
39 administration have been paid, any unused premiums and any  
40 reimbursements or claims dividends from the liquidator remaining

1 in any category shall be retained by the association and applied to  
2 reduce future premium charges in the appropriate category.  
3 However, an insurer which ceases to be a member of the  
4 association, other than an insurer that has become insolvent or has  
5 withdrawn from the state and has surrendered its certificate of  
6 authority following an initial assessment that is entitled to a refund  
7 based upon an adjusted assessment as provided above in this  
8 section, shall have no right to a refund of any premium previously  
9 remitted to the association. The commissioner may suspend or  
10 revoke the certificate of authority to transact business in this state  
11 of a member insurer which fails to pay a premium when due and  
12 after demand has been made.

13 Interest at a rate equal to the current federal reserve discount  
14 rate plus 2 ½ percent per annum shall be added to the premium of  
15 any member insurer which fails to submit the premium requested  
16 by the association within 30 days after the mailing request.  
17 However, in no event shall the interest rate exceed the legal  
18 maximum.